DAIHATSU (MALAYSIA) SDN. BHD. v. PENDAKWA RAYA

[A.Cr.J. (Shaik Daud J.) August 6, 1986]

[Kuala Lumpur – Selangor Criminal Appeal No. 37 of 1984]

Local Government – Appellant charged for contravening by-law 1(51) of Part VI of the Petaling Jaya Town Area (Amendment) By-Laws 1975 – Repeal of statute under which by-law was made – Effect of – Local Government Act, 1976 (Act 171), s. 166 – Town Board Enactment F.M.S. (Cap. 137), s. 16(1).

Interpretation – Repeal of statute under which by-law was made – Lacuna in law – Effect of.

The appellants were charged on October 4, 1983 for using their premises for the trade of a motor car dealer without a licence from the Petaling Jaya Municipal Council thereby contravening by-law 1(51) of Part VI of the Petaling Jaya Town Area (Amendment) By-Laws 1975. The Magistrate convicted the appellants and fined them $1,000. The appellants appealed principally on the ground that the learned Magistrate erred when he held that the by-law was valid.

By-Law 1(51) Part VI of the Petaling Jaya Town Area (Amendment) By-Laws 1975 under which the appellants were charged was made pursuant to section 16(1) of the Town Boards Enactment F.M.S. Cap. 137 which empowered the Majlis Perbandaran Petaling Jaya (MPPJ) to make such by-laws. Section 166 of the Local Government Act, 1976 repealed the whole of the Town Boards Enactment F.M.S. Cap. 137 with the exception of a number of sections beginning from section 67 onwards. By virtue of this section 166 thereby repealed section 16(1) of the Town Boards Enactment F.M.S. (Cap. 137).

Held: allowing the appeal: (1) the by-laws made by the MPPJ pursuant to the Town Board Enactment F.M.S. Cap. 137 ceased to be valid on repeal of section 16(1) of the Enactment by section 166 of the Local Government Act, 1976;

(2) the appellants were wrongfully charged and convicted under the said by-law.

Case referred to:

(1) *Watson* v. *Winch* [1916] 1 K.B. 688.

CRIMINAL APPEAL.

Tony Dhana for the appellants.

Azlan bin Abdul Halim (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Shaik Daud J.: Daihatsu (M) Sdn. Bhd. was charged in the Petaling Jaya Magistrates Court as follows:

"That you, on October 4, 1983, at about 3.30 p.m. did use premises No. 86, Jalan SS 21/39, Damansara Utama, Petaling Jaya, for the trade of a motorcar dealer without being licensed in that behalf by the Petaling Jaya Municipal Council, and that you have thereby contravened by-law 1(51) of Part VI of the Petaling Jaya Town Area (Amendment) By-Laws 1975, an offence punishable under Section 119 of the Local Government Act 1976."

The Personnel Manager of the defendant company appeared on behalf of the company and pleaded not guilty. The prosecution called one witness Mohamed Sharuddin bin Hashim, the Health Inspector of the Majlis Perbandaran Petaling Jaya (MPPJ) who deposed that on the day in question he visited the premises and discovered the defendant company had no licence to operate as a car dealer. According to Mohamed Sharuddin the defendant Company did apply for a licence but the MPPJ did not issue it with one. In cross-examination he admitted that since the Ministry of Trade and Industry gave clearance on March 16, 1984 the MPPJ had no objections to issue the licence and did issue one in 1983, but because of Government policy the MPPJ did not issue any licence in 1984. He did not elaborate what the policy was.

At the close of the prosecution case the learned Magistrate held that the prosecution had successfully proved a *prima facie* case and called upon the defendant company to make their defence but they elected to remain silent whereupon the learned Magistrate convicted the defendant company and imposed a fine of $1,000/- in default 3 months' imprisonment.

Against this conviction and sentence the defendant Company has now appealed principally on the ground that the learned Magistrate erred when he held that the by-law is valid.

It is not disputed that on the day in question or for that matter for the year 1984 the defendant company had no licence to operate as a car dealer. The only issue to be decided was whether there existed a law empowering the MPPJ to licence the defendant company. The learned Magistrate was of the view that the MPPJ had the necessary powers to do so by virtue of section 102(s) of the Local Government Act 1976 and section 28 of the Interpretation Act 1967. Apart from saying this it is unfortunate that he did not say why he was of that view.

Now By-Law 1(51) Part VI of the Petaling Jaya Town Area (Amendment) By-Laws 1975 under

which the defendant company was charged was made pursuant to section 16(1) of the Town Boards Enactment F.M.S. (Cap. 137), which empowered the MPPJ to make such by-laws. In 1976 Parliament passed an act called the Local Government Act 1976 with the aim of revising and consolidating all laws relating to local government. This Act shall come into force in a State on such date as the State Authority may appoint and in the case of Selangor the date appointed was January 1, 1977. Section 166 of the Local Government Act 1976 repealed the whole of the Town Boards Enactment F.M.S. (Cap. 137) with the exception of a number of sections beginning from section 67 onwards. By virtue of this, section 166 thereby repealed section 16(1) of the Town Boards Enactment F.M.S. (Cap. 137). Since the by-law under which the defendant company was charged was made by the MPPJ pursuant to section 16(1) of the Town Boards Enactment F.M.S. (Cap. 137), with the repeal of section 16(1), what then is the position of the said by-laws? It is trite law that if a statute under which by-laws are made is repealed, these by-laws are impliedly repealed and ceases to have any validity unless the repealing statute contains some provision preserving the validity of the by-law notwithstanding the repeal. (See *Craies* on Statute Laws 7th Edition 336 and 414). In other words unless there is a saving clause in the new statute preserving the old by-law, with the repeal of the statute, the by-law too collapse. When section 166 of the Local Government Act 1976 repealed the Town Boards Enactment F.M.S. (Cap. 137) it did not make exceptions to section 16(1) of the Enactment. The exceptions were from section 67 onwards. This principle was applied in the case of *Watson* v. *Winch.*[1] In that case the appellant Watson was charged for an offence against a certain by-law made in 1879 in that he rode a certain bicycle on a footway specifically made for foot passengers. This by-law was made by section 45 of the Norwich Improvement Act 1879 and was allowed by the Local Government Board in 1880. The appellant contended that the by-law had been repealed as far as bicycles were concerned by section 85 of the Local Government Act of 1888. The justices were of the different view and they convicted the appellant. On appeal the question for the opinion of the Court was whether the by-law was or was not in force at the date of the conviction. In allowing the appeal by Watson, Lord Reading C.J. said:

> "It has been long established that, when an Act of Parliament is repealed, it must be considered (except as transactions passed and closed), as if it had never existed. That is the general rule; and we must not destroy that, by indulging in conjectures as to the intention of the Legislature."

and further down he adds:

> "It would follow that any by-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the by-law notwithstanding the repeal. Applying that principle to this case, it follows that the by-laws made under the Norwich Improvements Act, 1879 have no longer any validity and that the conviction must be quashed."

The position in our present case is similar to the above case. I would therefore hold that when section 16(1) of the Town Boards Enactment F.M.S. (Cap. 137) was repealed by section 166 of the Local Government Act 1976 without providing for any saving clause, the by-law made under section 16(1) of the Enactment ceases to have any validity. In other words Part VI of the P.J. Town Area (Amendment) By-Laws 1975 validly made by the MPPJ ceases to have any validity by the said repeal.

That does not appear to be the end of the matter because the learned Magistrate in convicting the defendant Company was of the view that by virtue of section 102(s) Local Government Act 1976 and section 28 of the Interpretation Act 1967, the MPPJ has the power to licence the defendant Company. With respect, I am of the view that the learned Magistrate appears slightly confused. The question for him to decide was whether the by-law 1(51) of the 1975 By-Laws was still valid not whether the MPPJ has the power to make by-law 1(51). It is clear that that by-law was never made under the Local Government Act 1976 but was made pursuant to section 16(1) of the Enactment F.M.S. (Cap. 137) which was eventually repealed by section 166 of the Local Government Act 1976.

Let me now examine whether section 102 of the Local Government Act 1976 and section 28 of the Interpretation Act 1967 are applicable. By no stretch of imagination can section 102(s) of the Local Government Act 1976 apply to the present case. While it is true that section 102(s) empowers the MPPJ to make by-laws to "prohibit, regulate, inspect, supervise and licence any trade, business, industry, profession or calling" but the MPPJ is yet to make the said by-laws. The by-law under which the defendant company was charged was never made pursuant to section 102(s) of the Act but under some other statute which had been repealed.

As such I hold that the learned Magistrate erred in law when he held that section 102(s) of the Act of 1976 applied.

Nor can section 28 of the Interpretation Act 1967 save the situation. Section 28 reads –

"When a written law repeals in whole or in part any former written law and subtitutes other provisions therefor, subsidiary legislation made under the repealed law shall, in so far as it is not inconsistent with the substituted provisions, remain in force until revoked or replaced by subsidiary legislation made under the repealing law, and shall be deemed for all purposes to have been made thereunder."

This section provides for subsidiary legislation to be unaffected by repeal of authorising law in certain cases. Reading the marginal notes of section 28 it is clear and obvious that section 28 does not apply to all cases but only to certain cases. If Parliament intended the Interpretation Act 1967 to be applicable to all cases it would have specifically said so but in section 2(1) it clearly says that the Act shall only apply for the interpretation of and otherwise in relation to –

(a) this Act and all Acts of Parliament enacted after the commencement of this Act;

(b) all laws, whether enacted before or after the commencement of this Act, revised under Revision of Laws Act 1968;

(c) all subsidiary legislation, whether made under this Act and under Acts of Parliament enacted after the commencement of this Act;

(d) all subsidiary legislation, whether made before or after the commencement of this Act, revised under the Revision of Laws Act, 1968;

(e) all subsidiary legislation made after December 31, 1968 under laws revised under the Revision of Laws Act 1968.

Section 2(2) states –

"This Act shall *not* apply for the interpretation of or otherwise in relation to any written law *not* enumerated in subsection (1)." (the emphasis is mine).

From this it is abundantly clear that the Interpretation Act 1967 shall only apply for the interpretation of certain Acts as enumerated above from (a) to (e) and subsection (1) of section 2 emphasised that it shall not apply for the interpretation of laws not enumerated: It must be remembered that in the present case what is sort to be interpreted is not the Local Government Act 1976. If it is then we are not concerned with by-laws as has been earlier pointed out no by-laws were made under it. Section 28 only applies to an Act after the Interpretation Act 1967 under which subsidiary legislation has been made and such an Act is subsequently repealed by another Act. In other words if the MPPJ pursuant to section 102(s) of the Local Government Act 1976 makes certain by-laws and when section 102(s) itself is later repealed by another statute, then section 28 Interpretation Act 1967 is applicable to interpret the validity of that by-law. This is not the case here. None of the situations enumerated in section 2(1) is applicable to our present case. The intention of Parliament in not making the Interpretation Act to cover all situations other than those enumerated in section 2(1) is clear and unambiguous and the reason for this is obvious that is Parliament wanted to do away with old and antiquated by-laws and ensure local governments to keep pace with the changing times.

It is unfortunate that no saving clause was inserted into the Local Government Act 1976 to keep alive or preserve the by-law of the F.M.S. Enactment until the MPPJ had drafted their own by-laws pursuant to section 102(s) of the 1976 Act. It is not the function of the courts to provide for this lacuna in the law. The duty of the courts is only to interpret the provisions of existing laws. To perhaps save the situation, the Selangor State Authority should have delayed adopting the Local Government Act 1976 until all its local authorities had drafted their own new by-laws.

To sum up, the by-laws made by the MPPJ pursuant to the Town Board Enactment F.M.S. (Cap. 137) ceased to be valid on repeal of section 16(1) of the Enactment by section 166 of the Local Government Act 1976. Consequently the defendant company was wrongly charged and convicted under the said by-law.

I allow the appeal, quash the conviction and order the fine, if paid, to be refunded to the defendant company.

Order accordingly.

Solicitors: *Zain & Co.*